



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201231013**
Release Date: 8/3/2012
Date: May 8, 2012
UIL Code: 501.06-00
501.06-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:
All Years

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(6). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: March 21, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Restaurant Chain
C = State
D = Date

UIL:

501.06-00
501.06-01

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6). The basis for our conclusion is set forth below.

Issue

Do you qualify for exemption under section 501(c)(6) of the Code? No, for the reasons stated below.

Facts

You were incorporated under the Non-Profit laws of the State of C on D.

Your purpose is to provide for the common interests and mutual benefit of B franchisees. You provide a forum for the members to communicate with each other and with the franchisor. You also conduct meetings and provide a website for members to share information.

Letter 4034 (CG) (11-2005)
Catalog Number 47628K

You provided a breakdown of your activities as follows:

50% of activities are organizing and presenting a yearly convention put on by members for members focusing on educational presentations.

30% of activities are publishing periodic newsletters and emails to members focusing on business updates and educational information.

15% of activities are maintaining a website complete with a forum as a vehicle for members to communicate and share information.

You indicated that the remainder of the time is focused on responding to issues as they arise.

Your annual convention is a three day event with general sessions and workshops, vendor exhibits and guest speakers. The conventions are open to B franchisees and product suppliers of B stores as vendors. The product suppliers pay a vendor fee for a booth and depending on the amount of the fee paid, some get to speak at the convention and get monthly exposure on your webpage and in your newsletters.

Topics covered at the convention include marketing techniques, marketing, juggling TV and print discounts, what other markets are doing, what's new and what's working, and current franchisee issues (i.e. remodel initiative). All topics covered pertain to operating a B pizza store. You submitted representative copies of your newsletters which address similar topics.

In a prior year, you contracted with an attorney to negotiate changes to the franchise agreement terms with the franchisor.

You have one class of membership. Membership is limited to majority owners of one or more B stores with each member having one vote. Member dues are paid yearly, based on the number of stores owned and subject to change each year based on needs which may facilitate a special assessment. You currently have approximately 250 members.

Your financial data shows that your revenue comes from member dues, convention income, and vendor exhibit fees. In the last two years, you have received more revenue from convention income and vendor exhibit fees than you have from member dues. The convention activity comprises the majority of your annual expenditures.

Law

IRC 501(c)(6) provides for exemption of business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues (whether or not administering a pension fund for football players), which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations states that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Revenue Ruling 67-295 states that an organization composed of businessmen may qualify for exemption where its activities are limited to holding luncheon meetings devoted to a discussion, review, and consideration of the various problems in a particular industry directed to the improvement of business conditions for the industry as a whole.

Revenue Ruling 68-182 indicates the Internal Revenue Service will not in similar cases follow the decision entered by the United States Court of Appeals, Seventh Circuit, in *Pepsi-Cola Bottlers' Association Inc v. United States*, 369 F.2d 250 (1966). In that case, the Court held that the Association, whose members are engaged in the bottling and sale of a single franchised soft drink product and whose purposes and activities were directed to the more efficient production and sale of that product, qualified under section 501(c)(6) of the Code. It is the position of the Service that organizations promoting a single brand or product within a line of business do not qualify for exemption under section 501(c)(6) of the Code.

In *National Muffler Dealers Association v. United States*, 440 U.S. 472 (1979), the Supreme Court held that an association of a particular brand name of muffler dealers did not qualify for IRC 501(c)(6) status because it was not engaged in the improvement of business conditions of a line of business.

Application of Law

You are not described in section 501(c)(6) of the Code because you are not organized to improve business conditions of one or more lines of business as defined under this subsection.

You are not described in Section 1.501(c)(6)-1 of the Income Tax Regulations because your activities are not directed to the improvement of business conditions of one or more lines of business. Instead, you are formed to promote the business interests of your individual members who are all franchise owners of B pizza stores.

You are not like the organization described in Revenue Ruling 67-295. Unlike the organization described in this ruling, your primary purpose is not the improvement of business conditions for an industry as a whole. Instead, your activities are directed at the promotion of your members' businesses, B pizza stores which are a specific brand, not the industry as a whole. This is evident by the fact that your membership is open only to individuals that own one or more B franchises and all of your activities are directed to improving the operation of B stores.

You are identical to the organization discussed in Revenue Ruling 68-182 and the court case *Pepsi-Cola Bottlers' Association Inc v. United States*. Although Pepsi-Cola Bottlers' Association was granted exemption in 1966, two years later Revenue Ruling 68-182 made it clear that organizations promoting a single brand or product within a line of business do not qualify for exemption under section 501(c)(6) of the Code. Like this organization, your activities promote a single brand within a line of business; namely, B pizza stores. Your primary purpose is to promote the products and services of your members and increase their business performance.

Likewise, you are similar to the organization in *National Muffler Dealers Association v. United States*, 440 U.S. 472 (1979), since your primary purpose is to promote a particular brand.

Applicant's Position

You believe you meet the definition of a business league under Code section 501(c)(6) as a trade association of franchisees having a common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit.

You have named several franchisee organizations whom you claim operate similarly to you and have been granted exemption under section 501(c)(6) of the Code. You maintain their exemption should justify a similar ruling in your favor.

Service Response to Applicant's Position

As explained above, your organization is not promoting an industry as a whole. The information you have provided shows that your organization is formed to promote the business interests of your members who are all franchise owners of B pizza stores. Therefore, you do not meet the definition of operating for the improvement of business conditions of one or more lines of business.

Regarding your argument that other similar organizations are exempt under section 501(c)(6) of the Code, the Service does not accept the exempt status of another organization as legal precedent. The exempt status of an organization can not be applied broadly to other organizations as each applicant's facts and circumstances are unique.

Conclusion

Your primary purpose is the promotion and improvement of a particular chain of pizza stores. Instead of improving the business conditions of one or more lines of business as a whole, your activities are directed to improving the business conditions of your members who are all franchise owners of B pizza stores.

Accordingly, we conclude that you are not exempt under IRC 501(c)(6).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and

6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
P.O. Box 2508 Room 7-008
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G Lerner
Director, Exempt Organizations

Enclosure, Publication 892